

The Registration System of Real Estate in China (PRC)

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Since 1949, China has promulgated 4 Constitutions. But until 2004, the rule that “The legal private property of the citizen can not be violet” was the first time to be written in the Constitution (the 4th amendment of constitution of 1982)of China.¹

But it can't illustrate that China hasn't a legal system to protect the real transaction. In fact, China has it's own legal protection system to protect the real right. The mainly way to protect the real right is registration. In this article, I will introduce the real-estate right registration in China.

I. Real-Estate Right Registration in China

In China, the real-estate right registration is very complex. The registrations of real-estate are: house registration, land registration, forest registration, mineral resources registration, grassland registration, water source registration and fishing activities registration. So there are different types of registration department in the government.

1. The registration of houses

We have THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON URBAN REAL ESTATE ADMINISTRATION² and REGISTRATION OF THE TITLE OF HOUSES ON URBAN³ to regulate the registration of houses.

A. The sphere of houses registration

The houses registration can determine the right to use land (the land right is very complex in China, it will de introduced in the next part), title to a housing property and other right relating to the house. For example, a Chinese citizenship bought an apartment in X city of China, according to the law of China, he (she) has the title to the apartment, the right to use land in a period of years and other relating rights of the house such as the right of mortgage, the right of lease.

But, some problems haven't been solved:

a. The object of the houses registration

The object of the houses registration is the houses of urban. In the countryside, the right of the houses has not in the sphere of houses registration. It is not only related to the land right, but also related to the defect of the law of China.

b. The registration of right of release

For the reason that the REGISTRATION OF REAL ESTATE TITLE ON URBAN don't have the rules about the right of release, many cities have the conflict stipulates. For example, the REGULATION OF REAL ESTATE OF SHANG HAI stipulates: the houses registration include the title to a housing property, the right of mortgage and the right of lease etc. which all produced by the title to a housing property. But in the REGULATION OF REAL ESTATE OF GUANG DONG, the houses registration includes the title to a housing property, the right of mortgage etc. But it doesn't refer to the right of release.

B. The registration department

The department that register the house property right is a real estate administration department. The department is differs from the land administrative department. The article 60 of THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON URBAN REAL ESTATE ADMINISTRATION stipulate: In the case of the right to use land that is obtained through lease or allocation, it is necessary to apply for registration with the land administration department of the people's government above the county level, and through the verification of the department, the people's government at the same level shall issue a land use certificate.

When a building is finished on the land for houses development with the land use right obtained in accordance with the law, it is necessary to apply, by presenting the land use certificate, with the houses administration department of the people's government above the county level for registration, and through a proper verification, the department should issue a house title certificate. When a house is transferred or changed, an application should be made with the real estate administration department of people's government above the county level for registration of the change and upon the modified title certificate, an application should be made with the land administration department of the people's government at same level for a change to the right of land use. After a verification by the land administration department of the people's government at the same level, the people's government at the same level shall renew or modify the land use certificate.

C. The subject of registration

Those subjects of registration are natural person, legal person and other organizations.

2. The land registration

The People's Republic of China resorts to a socialist public ownership of land: an ownership by the whole people and ownerships by collectives.

In ownership by the whole people, the State Council is empowered to be on behalf of the State to administer the land owned by the State.

Land in urban districts shall be owned by the State. Land in the rural areas and suburban areas, except otherwise provided for by the State, shall be collectively owned by farmer including land for building houses, land and hills allowed to be retained by farmer.

People's government at the county level shall register and put on record lands collectively owned by farmer and issue certificates to certify the ownership concerned.

People's government at the county level shall register and put on record the use of land collectively owned by farmers for non-agricultural construction and issue certificates to certify the right to use the land for construction purposes.

People's government at the country level shall register and put on record uses of land owned by the State by units or individuals and issue certificates to certify the right of use. The State Council shall designate specific units to register and put on record State-owned land used by central government organs.

The land registration department is belongs to the peoples government. Because the government has different level, the land registration department also has different level.

The laws about the land registration mainly are: THE LAW OF LAND ADMINISTRATION OF THE PEOPLE'S REPUBLIC OF CHINA⁴ and REGULATION OF LAND ADMINISTRATION⁵.

3. The registration of forest

In China, the ownership of forest also has two kinds of style: state and collective.

The laws about the registration of forest are THE FOREST LAW OF THE PEOPLE'S REPUBLIC OF CHINA⁶ and REGULATION ABOUT PRACTICING THE FOREST LAW OF

THE PEOPLE'S REPUBLIC OF CHINA⁷

For the forests, trees and woodlands owned by the state and the collective and the trees and woodlands owned by private individuals, the people's government above the county level shall register and record them, issue certificates and confirm the ownership and the right to use.

The State Council may authorize the competent forestry authorities under the State Council to register and record the forests, trees and woodlands in key forest districts determined by the State Council to be owned by the state, issue certificates and inform relevant local people's governments.

4. The registration of grassland

The grasslands are owned by the state, that is, by the whole people, with the exception of the grasslands that are owned by collectives in accordance with the law.

GRASSLAND LAW OF THE PEOPLE'S REPUBLIC OF CHINA⁸ is the law that stipulates the registration of grassland.

With respect to grasslands used by units under ownership by the whole people, the local people's governments at the county level or above shall register such grasslands, issue certificates to the said units after verification and thus establish their right to use such grasslands. With respect to grasslands under collective ownership and those under ownership by the whole people that are assigned to collectives for long-term use, the local people's governments at the county level shall register such grasslands, issue certificates to the collectives after verification and thus establish their right of ownership of the grasslands or their right to use them..

5. The registration of mineral resources

THE MINERAL RESOURCES LAW OF THE PEOPLES REPUBLIC OF CHINA⁹ and PROCEDURES FOR ADMINISTRATION OF REGISTRATION OF MINING OF MINERAL RESOURCES¹⁰ of China stipulate the right of mineral resources and its registration.

Mineral resources belong to the State. The right of State ownership in mineral resources is exercised by the State Council. State ownership of mineral resources, either near the earth's surface or underground, shall not change with the alteration of ownership or right to the use of the land which the mineral resources are attached to.

Anyone who wishes to explore or mine mineral resources shall separately make an application according to law and shall register after obtaining the right of exploration or mining upon approval, with the exception of the mining enterprises that have, in accordance with law, applied for and obtained the right of mining and are conducting exploration within the designated mining area for the purpose of their own production. The State protects the right of exploration and of mining from encroachment and protects the order of production and other work in the mining and exploration areas from interference and disruption.

The State practices a unified regional registration system for exploration of mineral resources. The department in charge of geology and mineral resources under the State Council shall be responsible for the registration of exploration of mineral resources. The State Council may authorize other relevant competent departments to handle the registration of exploration of specified minerals. Measures for regional registration of exploration of mineral resources shall be formulated by the State Council.

The establishment of state-operated mining enterprises shall be approved respectively by the State Council, the relevant department in charge under the State Council and the people's governments of provinces, autonomous regions, or municipalities directly under the Central Government.

Procedures for the examination and approval of the establishment of collective mining enterprises of villages and towns, for the issuance of mining licenses and for the administration of mining by individuals shall be formulated by the standing committees of the people's congresses of provinces, autonomous regions, or municipalities directly under the Central Government.

6. The water resources registration

WATER LAW OF THE PEOPLE'S REPUBLIC OF CHINA¹¹ is about the right of water resources. This Law is formulated for the national development, utilization, preservation, and protection of water, for the prevention and control of water disasters.

Water resources shall be owned by the state. The State Council shall exercise ownership of water resources on behalf of the state. Water in the ponds of rural collective economic organizations and in the reservoirs constructed and managed by rural collective economic organizations shall be used by those organizations.

The PRC apply the systems of water licensing and paid use of water resources according to law, excepting collective economic organizations and their members' use of the water in the ponds and reservoirs owned by those organizations. The department of water administration under the State Council shall be responsible for organizing the water license system implementation as well as the nationwide paid use of water resource system..

The state shall, with respect to water resources, adopt a system that organizes the administration by watersheds as well as by administrative areas.

The department of water administration under the State Council shall be in charge of the unified administration and supervision of water resources of the nation.

The watershed authorities, set up by the department of water administration under the State Council, at the important rivers and lakes (as determined by the state) (hereinafter referred to as the watershed authorities) shall, within their respective jurisdictions, exercise the water resource administration and supervision provided for by laws and regulations and authorized by the department of water administration under the State Council.

The departments of water administration in the local people's governments at and above the county level shall, according to the prescribed limit of authorities, be in charge of the unified administration and supervision of water resources within their respective administrative areas.

7. The registration of fishing activities

All productive activities of fisheries, such as aquaculture and catching or harvesting of aquatic animals and plants in the inland waters, tidal flats and territorial waters of the People's Republic of China, or in other sea areas under the jurisdiction of the People's Republic of China, must be conducted in accordance with the FISHERIES LAW OF THE PEOPLE'S REPUBLIC OF CHINA.¹²

The department of fishery administration under the State Council shall be in charge of the administration of fisheries throughout the country. Departments of fishery administration under people's governments at or above the county level shall be in charge of fisheries in their respective areas. These departments shall be authorized to set up fishery supervision agencies in important fishing areas and fishing ports.

The state shall encourage units under ownership by the whole people, units under collective ownership and individuals to make the best use of suitable water surfaces and tidal flats to develop aquaculture.

In conformity with the overall arrangement made by the state for utilization of water areas,

people's governments at and above the county level may assign state-owned water surfaces and tidal flats that have been designated for aquaculture to units under ownership by the whole people, units under collective ownership and individuals to develop aquaculture, and after examining their qualifications grant those units aquaculture licenses to confirm their rights to the use of such water surfaces and tidal flats.

Any unit or individual that intends to engage in inland water or inshore fishing must first apply to departments of fishery administration for fishing licenses. Licenses for using large trawls and purse seines in marine fishing shall be granted upon approval by the department of fishery administration under the State Council. Other fishing licenses shall be granted upon approval by local people's governments at or above the county level, but the fishing licenses for marine operations that have been issued must not allow uses of trawls and other fishing gear which exceed quotas set by the state.

From those stipulations about the registration of China, we can see that China has a real estate registration system. The registration system acts an important rule in the field of real-estate transactions. But for the reason that all of the department of registration are the administrative department and belong to the government, every grade of government has its different kinds of department of registration, there are many problems in the practice of registration in these years. The reform about the registration becomes a serious thing in China now. Because the reform of registration connect with the reform of government structure, it is very difficult to do it in China. In July 10, 2005, China promulgated The Draft of Real Law of PRC. It shows that the reform of registration comes into a new stage.

II. The content about the registration of real estate in The Draft of Real Law of PRC

Many articles of The Draft of Real Law of PRC are about the registration of real estate right. From article 9 to article 25 of it, shows a main idea that the registration of real estate should be unified. The real estate would be registered by a unified department of registration. This kind of style will change the situation about the registration of real estate of China.

1. The validity of law about real estate registration

The establishment, transformation and changing the real estate, shall be registered. It would not be a real right if the real estate has not been registered. But the nature source of the state could not be registered.

2. Unified the registration

The registration of a real estate will be registered by the department of registration where the real estate is located. The state will unify the real estate registration law. Maybe there will be a Registration Law of Real Estate of PRC. But it still has a contention about the reform of registration department.

3. The material of applying to register

The party who apply to register should submitting the certificate of real estate right, contract, judgement and other document which could demonstrate the location and area of a real estate.

4. The book of registration

The book of registration is the basement of the right of real estate. The content of the real estate should be recorded by the book..

5. The certificate of real estate right

The certificate of real estate right is a document which demonstrates the real estate belongs to someone. The content of the certificate of real estate must be the same as the content of the book of registration. If the content of them are different, the content of the book of registration would be adopted.

6. The objection to the registration of real estate

Anyone who is related to the real estate can object to the registration of real estate.

7. The registration fees

The registration fees of real estate would not be collected according with the area, volume and the price rate of the real estate. The detail standard will be drawn up by the State Council.

To sum up, if a Real Law of PRC could be promulgated in China, it will have a great change in the field of real estate in China. The private property should be better protected by the law and the environment of transaction would be better than before.

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¹ AMENDMENT OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS TO THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA (Adopted on March 14, 2004)

² THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON URBAN REAL ESTATE ADMINISTRATION (Adopted by the Eighth Meeting of the Standing Committee of the Eighth National People's Congress on July 5, 1994)

³ Adopted by the Department of Architecture of PRC on October 27, 1997. Amended on August 15, 2001.

⁴ THE LAW OF LAND ADMINISTRATION OF THE PEOPLE'S REPUBLIC OF CHINA (Revised and adopted at the Fourth Session of the Standing Committee of the Ninth National People's Congress of the People's Republic of China on August 29, 1998, to be put into effective as of January 1, 1999)

⁵ Adopted at the 12th Session of the State Council of the People's Republic of China on December 24, 1998, to be put into effective as of January 1, 1999

⁶ THE FOREST LAW OF THE PEOPLE'S REPUBLIC OF CHINA (Passed by the Seventh Session of the Standing Committee of the Sixth National People's Congress on September 20, 1984 and Revised in Line with the Decision on the Revision of the Forest Law of the People's Republic of China of the Second Session of the Ninth National People's Congress on April 29, 1998)

⁷ Adopted by the State Council of the People's Republic of China on January 29, 2001, to be put into effective as of January 29, 2001

⁸ Adopted by the Standing Committee of the National People's Congress of the People's Republic of China on June 18, 1985. Amended on December 18, 2002.

⁹ Adopted by the Standing Committee of the National People's Congress of the People's Republic of China on October 1, 1986. Amended on August 29, 1996.

¹⁰ Adopted by the State Council of the People's Republic of China on March 26, 1994, to be put into effective as of March 26, 1994

¹¹ The Water Law of the People's Republic of China was modified and adopted at the 29th Meeting of the Standing Committee of the Ninth National People's Congress on August 29, 2002; the modified Water Law of the People's Republic of China is hereby promulgated and shall come into force as of October 1, 2002

¹² FISHERIES LAW OF THE PEOPLE'S REPUBLIC OF CHINA (Adopted at the 14th Meeting of the Standing Committee of the National People's Congress and promulgated by Order No. 34 of the President of the People's Republic of China on January 20, 1986, and effective as of July 1, 1986)

Decision of the Standing Committee of the National People's Congress on the Amendment of the Fishery Law of the People's Republic of China (Adopted at the Eighteenth Meeting of the Standing Committee of the Ninth National People's Congress on October 31, 2000)